

JUDGE'S COPY

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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

DESMOND V. GAYLE  
Plaintiff

v.

TOM HOGAN (Warden)  
ROGER THOMAS (Deputy Warden)  
YORK COUNTY PRISON  
Defendants

CIVIL NO. 1:00-CV-0881

(JUDGE WILLIAM W. CALDWELL)

FILED  
HARRISBURG, PA

SEP 06 2000

MARY E. DANDEA, CLERK  
Per 9/7/00

Defendant's Rule 12(b) (6) Motion

The defendants by and through their attorney Donald L. Reihart, Esquire, move your honorable court to dismiss Plaintiff's complaint for failure to state a claim upon which relief can be granted for the following reasons:

(1)

42 U.S.C. § 1997 (e) provides:

No action shall be brought with respect to prison conditions under section 1979 of the revised statutes of the United States, {42 U.S.C. § 1983}, or any other Federal Law by a prisoner confined in any jail prison or other correctional facility until such administrative remedies as are available are exhausted.

(2)

York County Prison has administrative remedies which were in place at the time of the events described in Plaintiff's complaint which include money damages, changes in procedure and equitable relief.

(3)

Plaintiff has failed to comply with 42 U.S.C. § 1997 (e) in that he has failed to file grievances and exhaust administrated remedies available concerning the prison conditions alleged in his complaint.


(4)

The claims set forth in Plaintiff's complaint are without foundation and should be dismissed under 28 U.S.C. § 1915 A (b) (1) as frivolous and malicious.

(5)

Plaintiff's complaint should be dismissed for failure to join an indispensable party.

Respectfully submitted,

By: 

Donald L. Reihart, Esq.  
Sup. Ct. I.D. #07421  
2600 Eastern Boulevard  
Suite 204  
York, PA 17402-2904  
Telephone (717) 755-2799

Assistant Solicitor for York County


Dated: 9-6-00

CERTIFICATE OF SERVICE

I, Donald L. Reihart, Esquire certify that a true and correct copy of the foregoing Defendant's Rule 12(b) (6) Motion was caused to be served on the date shown below by depositing same in the United States mail, first-class, postage prepaid thereon, addressed as follows:

Desmond V. Gayle  
York County Prison  
3400 Concord Road  
York, PA 17402

Respectfully submitted,

By: 

Donald L. Reihart, Esq.  
Sup. Ct. I.D. #07421  
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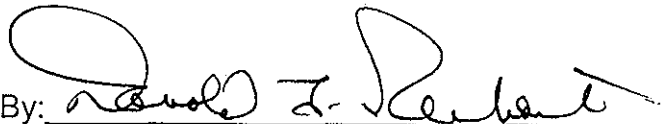
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CERTIFICATE OF CONCURRENCE

I certify that no effort was made to obtain concurrence because the case is a prisoner pro se case and is unnecessary under Middle District Local Rule 7.1

Respectfully submitted,

By: 

Donald L. Reihart, Esq.  
Sup. Ct. I.D. #07421  
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Suite 204  
York, PA 17402-2904  
Telephone (717) 755-2799

Attorney for Plaintiff

Dated: 9-6-00